IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 18970 of 2001

Between:

Gulam Mohamad Rafeeq, S/o. Bikari Sab, Muslim, R/o. Dr.No.4/41,
Temple Street, Kadiri, Ananthapur District.

..... PETITIONER

AND

1 Revenue Divisional Officer, Penukonda, Ananthapur District.
2 The Mandal Revenue Officer, Kadiri, Ananthapur District.
3 The District Collector, Ananthapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in trying to dispossess the petitioner from the lands in Sy.No.1736-2B of Penukonda, Kadiri, Ananthapur District admeasuring 2.50 cents without acquiring the same under the Land Acquisition Act or any other act as illegal, arbitrary, null and void and for a consequential order to the respondents directing them to stop all further proceedings relating to distribution of lands.

Counsel for the Petitioner:MR.M.V.SURESH

Counsel for the Respondents: GP FOR REVENUE

The Court made the following:

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O R D E R:

This writ petition is filed under Article 226 of the Constitution of India seeking a Mandamus declaring the action of the respondents in trying to dispossess the petitioner from the lands in Survey No.1736-2B of Penukonda, Kadiri, Ananthapur District admeasuring Ac.2.50 cents without acquiring the same under the Land Acquisition Act as illegal and arbitrary.

The property in question is the ancestral property. In the affidavit filed in support of the writ petition it is stated that in the year 1961, the grand father (Late Sri Glulam Khadar Sab) of the petitioner was issued with the 'D' form patta in SurveyNo.1736-2 admeasuring Ac.5.00 of Penukonda, Kadiri. Since then he was in possession and enjoyment of the same. After his death, the father of the petitioner and his brother (who are the sons of late Sri Gulam Khadar Sab) divided the property into equal shares. Subsequently, the father of the petitioner sub-divided the land under a Registered Settlement Deed dated 12-07-1996. Since then the petitioner has been in continuous possession and enjoyment of the land admeasuring Ac.2.50 cents by raising crops. On application of the petitioner for issuance of the Ryotwari Pattadar Pass Book, the 2nd respondent conducted an enquiry and issued a pass book on 21-12-1999. While so, the respondents without any manner of right over the aforesaid lands, are trying to interfere with the possession and enjoyment of the petitioner stating that the land in question is required for providing house sites. Therefore, he got issued a legal notice dated 06-09-2001 to the respondents. The grievance of the petitioner is that even though he acquired the land in question under a Registered Settlement Deed, the respondents without any manner of right and without following the due process of law interfering with the peaceful possession and enjoyment of the same, which illegal and arbitrary.

After receipt of the notice from this Court, the respondents filed their counter affidavit

stating that the land which was assigned to the grand father of the petitioner was resumed to Government in violation of the conditions in their office Dis.No.470/2000(E) dated 24-05-2000 as the assignee never entered upon the land during his life period and after death of the assignee his legal heirs are also not entered upon the land. Hence the lands were resumed to Government in order to provide house site pattas to the weaker sections of Kadiri town. Therefore, the question of interfering with the possession and enjoyment of the petitioner does not arise.

The case of the respondents is that the land in question was never occupied by the assignee (Gulam Khadcar Sab) or his legal heirs from the date of assignment, as stated by the petitioner, the land was never cultivated till to-day. Therefore, the petitioner violated the conditions of assignment by not entering upon the land.

At this juncture, it is pertinent to note that the petitioner did not choose to deny the allegations made by the respondents giving strict proof either by filing necessary documents or reply affidavit.

Having regard to the facts and circumstances of the case and taking into account that the petitioner has violated the conditions of assignment by not entering upon the land, I am of the view that the writ petition is not maintainable and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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06-07-2005

Mjl/*

To,

1 The Revenue Divisional Officer, Penukonda, Ananthapur District.
2 The Mandal Revenue Officer, Kadiri, Ananthapur District.
3 The District Collector, Ananthapur District.

4. 2 CCs to G.P. for Revenue, High Court buildings, Hyderabad.

5. 2 CD copies.

*Form-NIC-OGS/WP{**PRASAD**}*